

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PENNSYLVANIA PRISON  
SOCIETY, ET AL.,

Plaintiffs,

v.

HONORABLE MARK SCHWEIKER,  
Governor, Commonwealth of  
Pennsylvania, ET AL.,

Defendants.

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CIVIL ACTION NO. 3:CV-97-1731

(JUDGE CAPUTO)

**ORDER**

**NOW**, this 11th day of December, 2007, in response to the mandate of the United States Court of Appeals for the Third Circuit which stated “[w]e remand to the District Court for further proceedings consistent with the Opinion of this Court to develop the record in order to determine plaintiffs’ standing to bring this action”, **IT IS HEREBY ORDERED** as follows:

1. Notwithstanding Plaintiffs’ request to permit intervention, no intervention will be permitted at this point in the proceedings as “[a] motion for intervention under Rule 24 is not an appropriate device to cure a situation in which plaintiffs may have stated causes of action that they have no standing to litigate.” *McKay v. Heyison*, 614 F.2d 899, 906 (3d Cir. 1980) (quoting *McClune v. Shamah*, 593 F.2d 482, 486 (3d Cir. 1979)). “It is well-settled that since intervention contemplates an existing suit in a court of competent jurisdiction and because intervention is ancillary to the main cause of action, intervention will not be permitted to breathe life into a ‘nonexistent’ law suit.” *Fuller v. Volk*, 351 F.2d 323, 328 (3d Cir. 1965)(citing numerous cases). Without standing there is no action in which others may

intervene. Fed. R. Civ. P. 24

2. Since a factual determination is required, the parties will be permitted to conduct discovery. All discovery shall be completed by **April 30, 2008**.

3. Since the United States Court of Appeals for the Third Circuit has instructed that evidence of injury (standing) is required of Plaintiffs, and that Plaintiffs "must offer facts showing that they likely would have received a majority vote in favor of recommendation", an *evidentiary hearing* will be held on **MONDAY, JUNE 2, 2008 AT 10:00 A.M.**, in Courtroom #1, Max Rosenn United States Courthouse, 197 South Main Street, Wilkes-Barre, Pennsylvania.

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge